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May 27, 2005

VIA ELECTRONIC FILING

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: **Notice of Ex Parte Presentation
Implementation of Section 340 of the Satellite Home Viewer Extension and
Reauthorization Act of 2004 -- MB Docket No. 05-49**

Dear Ms. Dortch,

EchoStar Satellite L.L.C. (“EchoStar”) hereby responds to the notice of ex parte presentation filed by the National Association of Broadcasters (“NAB”) on May 24, 2005 in this docket.¹

To the extent discernible from its notice,² the concerns raised by the NAB are meritless. *First*, Congress intended the significantly viewed provision to be self-executing. This is clear from the statutory text and underscored by the floor remarks of Rep. Joe Barton of Texas, a major sponsor of the statute: “Satellite carriers are authorized *upon enactment* of SHVERA to carry such signals.”³ Indeed,

¹ See Letter from Benjamin F.P. Bivins, NAB to Marlene H. Dortch, FCC (May 24, 2005).

² It is questionable whether NAB has provided an adequate summary of its ex parte discussions with Commission staff. See 47 C.F.R. § 1.1206(b)(2) (requiring ex parte notices to “contain a summary of the substance of the ex parte presentation and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required.”).

³ 150 Cong. Rec. E 2002 (Nov. 16, 2005) (emphasis added).

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in the Notice of Proposed Rulemaking issued in this docket, the Commission itself acknowledged that “Congress intend[ed] for satellite carriers to make use of the SV List to expand their carriage offerings so that their subscribers can begin to experience the benefits of the SHVERA as soon as possible.”⁴ Thus, there is no need for a DBS operator to wait for the Commission to adopt implementing regulations before commencing carriage of significantly viewed stations.

Second, the NAB fails to identify “possible scenarios” under which DBS operators might violate rules subsequently adopted by the Commission. In this regard, EchoStar notes that SHVERA did not give the Commission much leeway to change the basic rules governing the carriage of significantly viewed stations. This makes NAB’s concern implausible.

Please contact the undersigned if you have any questions regarding this matter.

Yours sincerely,

/s/

Pantelis Michalopoulos
Counsel for EchoStar Satellite L.L.C.

cc:

Deborah Kline
Bill Johnson
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⁴ *Implementation of Section 340 of the Satellite Home Viewer Extension and Reauthorization Act of 2004*, FCC 05-24, Notice of Proposed Rulemaking, at ¶ 14 (rel. Feb. 7, 2005).